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No. 80-2094

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1980

JOHN C. WEAVER, JR., M.D., and BMA OF OAKLAND, INC.,
Petitioners,

vs.

BRENDA MARIE PAYTON,
Respondent.

AMICUS CURIAE BRIEF OF UNION OF AMERICAN PHYSICIANS AND DENTISTS IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE CALIFORNIA SUPREME COURT

JEROME BERG
1255 Post Street, Suite 1010
San Francisco, CA 94109
Telephone: (415) 775-7751
Attorney for Amicus Curiae
Union of American
Physicians and Dentists

BOWNE-PERNAU WALSH • 180 NINTH ST. • S.F., CA 94103 • (415) 864-2300

TABLE OF CONTENTS

		Page
I.	Interest of the Amicus Curiae	1
II.	The issues addressed by the UAPD	2
	A. The absence of any statutory duty	2
	B. Maintenance of a viable physician-patient relationship	3
	C. The physician's obligation to innocent patients	4
	D. The rights of physicians as United States citizens	4
III.	Conclusion	5

TABLE OF AUTHORITIES CITED

United States Constitution, Thirteenth Amendment 6

California Health and Safety Code section 1317 2

41 U.S.C. sections 291, et seq. 2

42 U.S.C. sections 2000, et seq. 2

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I. Interest of the Amicus Curiae

The Union of American Physicians and Dentists (UAPD) is an independent trade union, registered with the United States Department of Labor, representing over 25,000 licensed physicians and dentists nationwide. The charter objectives set forth in the UAPD Constitution include the advancement of the highest quality of medical and dental care, maintenance of proper working conditions and, perhaps most importantly, obtaining and preserving the individual freedom of action necessary for the success of a physician's professional endeavors.

In order to promote that (1) quality of service, (2) maintenance of proper working conditions and (3) freedom of professional judgment, it is a stated policy of the UAPD that:

> The health professional has the right to render [medical] services in dignity. . . . Where third parties intrude between the doctor and the patient, in such a manner as to deprive the doctor of this right, as with any other honorable working person, the doctor has the right not to serve such third parties.

The UAPD respectfully submits this Amicus Curiae Brief, therefore, in the interest of preserving the right of a health professional to withdraw from the personal service of a patient whose conduct attacks his professional dignity and endangers the care of other patients. We respectfully submit that neither Ms. Payton, nor the California Supreme Court, has the right to coerce continuing personal service where those circumstances and dangers exist.

II. The Issues Addressed By The UAPD

A. The Absence of Any Statutory Duty

In this proceeding, the UAPD does not challenge any requirement that providers of emergency care serve persons in need of emergency care (*California Health and Safety Code* § *1317*); nor does it dispute herein the propriety of regulations determining federal elgibility standdards for indigent patients (41 U.S.C. §§ 291, et seq.) or requirements that medical services be provided without regard to any patient's race, creed, sex, color or national origin (42 U.S.C. §§ 2000, et seq.). Such legislation may be

a valid exercise of state and federal power, consonant with the ethical obligations of practitioners of the healing arts.

On the contrary, the UAPD is vitally interested in this case because of the undisputed fact that there was no violation of any statutory or other duty owed to Ms. Payton. (Findings of Fact Nos. 15 and 17; Conclusions of Law Nos. 3, 4 and 5.)[1]

B. Maintenance of a Viable Physician-Patient Relationship

More importantly, the UAPD feels that an integral part of the patient-physician relationship is the ability of a physician to withdraw from a case if his medical orders are ignored. Oftentimes, that ability to withdraw is the one factor that convinces a patient of the importance of the doctor's advice. Further, as a professional, a physician should not be placed in the frustrating position of overseeing the care of a patient whose health is deteriorating because of his or her refusal to accept medical advice.

The trial court found that Ms. Payton failed to keep appointments (Findings of Fact No. 6), used barbiturates contrary to doctor's orders (Findings of Fact No. 7) and failed to abide by dietary and liquid restrictions essential to successful dialysis treatment (Findings of Fact Nos. 9-13). Under those circumstances, a physician must be free to exercise his professional judgment and withdraw from the relationship. In order to be true to his professional responsibility, where the physician-patient relationship has

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[1]The Findings of Fact and Conclusions of Law issued by the trial court are marked as Appendix E to the Petition for Writ of Certiorari, filed June 9, 1981.

become unworkable—as the trial court found—the physician must be free to withdraw.[2]

C. The Physician's Obligation to Innocent Patients

The UAPD also asks this Court to recognize the professional obligation owed by a physician to all of his patients. When the conduct of one patient threatens the health and safety of others, a physician must be free to exercise his judgment to protect those innocent patients. Since the trial court found that Ms. Payton's "disruptive, abusive, and unreasonable" conduct "trespass[ed] upon the rights of other patients . . . endanger[ing] their rights to full and adequate treatment" (Findings of Fact No. 13), the UAPD is concerned that the California Supreme Court has ordered that danger to continue. When Dr. Weaver and BMA's staff cannot adequately supervise Ms. Payton's conduct so as to alleviate that danger, the California Supreme Court certainly cannot do so.

D. The Rights of Physicians as United States Citizens

Finally, a physician must enjoy the same Thirteenth Amendment rights guaranteed to the rest of America's citizenry. The UAPD wholeheartedly adopts the argument at pages 18 through 25 of the Petition for Writ of Certiorari, asserting the inalienable right not to be held in the involuntary personal service of another individual. Without questioning the obligation of a physician to render

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[2]The UAPD does not challenge herein the procedural steps that a physician must meet prior to that withdrawal. The trial court found that Dr. Weaver and BMA complied with each of those steps. (Conclusion of Law No. 8.)

emergency care when required,[3] the coerced maintenance of a continuing, thrice-weekly dialysis service is unconscionable in a free society.

The essence of slavery is one person's knowledge that another is bound into his or her service—by force of law, and pain of imprisonment—no matter how abusive a master he or she may be. We ask that members of the medical profession not be subjected to that badge of slavery by the unfounded and unwarranted order of the California courts.

III. Conclusion

The UAPD's position in this case is dictated by the undisputed facts that: there is no statutory or contractual basis to compel the further rendition of personal medical service, Ms. Payton's needs are chronic rather than emergency in nature, Ms. Payton's conduct is an affront to Dr. Weaver's professional dignity and a danger to his other patients, Dr. Weaver and BMA have duly and lawfully notified her of their desire to terminate ongoing personal services.

In light of those facts, this case does not question the existence of state regulation of medical services, but, rather, its limits. If the California Supreme Court can order continuing personal service under these undisputed facts, then there are no limits to California's power to

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[3]Conclusion of Law No. 6 noted that Ms. Payton could seek emergency treatment from any petitioner, and there is no challenge made to that conclusion. Rather, it is the continuing treatment of a chronic condition that, the UAPD respectfully submits, cannot be compelled.

conscript one private citizen into the long-term personal service of another—even under the most intolerable and demeaning circumstances.

In support of the rights of physicians as professionals and—more importantly—in support of their rights as individual citizens protected by the Thirteenth Amendment, the UAPD respectfully prays that the United States Supreme Court immediately relieve Dr. Weaver and BMA's staff from the null, void and unconscionable order of the California Supreme Court. It is respectfully requested that the California order compelling involuntary servitude be nullified and that Certiorari be granted to re-establish the proper balance between the California Supreme Court and citizens protected by the Constitution of the United States.

DATED: July 6, 1981.

Respectfully submitted,

JEROME BERG
Attorney for Amicus Curiae
Union of American
Physicians and Dentists

(Exhibit follows)

LAW OFFICES
WILSON & CASEY
VICTORIAN LEGAL CENTER
CORNER - 11th & GROVE
OAKLAND, CALIFORNIA 94607
(415) 465-6511

WARREN S. WILSON
JOANNE F. CASEY

SAN FRANCISCO OFFICE
3 EMBARCADERO CENTER
SAN FRANCISCO, SUITE 1665
(415) 788-9246

June 5, 1981

RECEIVED
JUN 8 1981

Mr. David Ivester
Charles Bond Professional Law Corp.
240 Stockton Street - Suite 500
San Francisco, California 94108

RE: Payton v. Weaver, et al

Dear Mr. Ivester:

In accordance with our telephone conversation, this will confirm that, on behalf of our client, Brenda Payton, we hereby agree that amicus curiae briefs may be filed in the United States Supreme Court in connection with your Petition to that Court for a Writ of Certiorari. We make this agreement with the understanding that you have made the same agreement on behalf of your client, Dr. John Weaver.

Yours sincerely,

Joanne F. Casey

JOANNE F. CASEY

JFC:is

LAW OFFICES
HANSON, BRIDGETT, MARCUS, VLAHOS & STROMBERG
333 MARKET STREET
SAN FRANCISCO, CALIFORNIA 94105
(415) 777-3200

RAYMOND L. HANSON
GERALD D. MARCUS
ROSS E. STROMBERG
RONALD C. PETERSON
DUANE B. GARRETT
TED C. KRUMLAND
PAUL A. GORDON
STEPHEN L. TABER
CRAIG J. CANNIZZO
STEPHEN B. PECK
STEVEN V. SCHNIER
KIM T. SCHOKNECHT
HARRY SHULMAN
THOMAS C. GEISER
DENNIS J. BYRNE
JOEL S. GOLDMAN
SYLVIA L. SPEARS

ARTHUR T. BRIDGETT
JOHN J. VLAHOS
WILLIAM J. BUSH
DAVID J. MILLER
LAURENCE W. KESSENICK
RAY E. McDEVITT
MICHAEL A. DUNCHEON
GERALD M. HINKLEY
JOAN L. CASSMAN
ALLAN D. JERGESEN
THEODORE A. HELLMAN
ROBERT L. RUSKY
DIANE W. CARTER
PETER N. GRANT
JACQUELYN J. GARMAN
BRUCE E. METHVEN

PENINSULA OFFICE
SUITE 220
TWO PALO ALTO SQUARE
PALO ALTO, CALIFORNIA 94304
(415) 494-9211

SACRAMENTO OFFICE
SUITE 260
1225 EIGHTH STREET
SACRAMENTO, CALIFORNIA 95814
(916) 448-5868

OF COUNSEL
THOMAS C. LYNCH

IN REPLY REFER TO:
SAN FRANCISCO OFFICE

July 6, 1981

Charles Bond
Professional Law Corporation
240 Stockton Street, Suite 500
San Francisco, CA 94108

Re: John C. Weaver, Jr., M.D., et al v. Brenda Marie Payton
U.S. Supreme Court No. 80-2094

Dear Mr. Bond:

This office represents Alta Bates Hospital and Herrick Hospital and Health Center of the East Bay. While our clients are not parties of record to the writ proceedings in California they are parties to the underlying action. Accordingly, Alta Bates Hospital and Herrick Hospital and Health Center of the East Bay hereby consent to the filing of an amicus curiae brief by Union of American Physicians and Dentists in the above-entitled matter.

Sincerely,

HANSON, BRIDGETT, MARCUS,
VLAHOS & STROMBERG

Stephen B. Peck by ms

Stephen B. Peck

SBP/jk

Law Offices
BERRY & BERRY
A Professional Law Corporation
CLOROX BUILDING
1221 BROADWAY, SUITE #1680
OAKLAND, CALIFORNIA 94612

SAMUEL H. BERRY
PHILLIP S. BERRY
WILLIAM C. SHARP
RON LANE
ELAINE M. McMAHAN
RICHARD R. RUGGIERI
JOHN H. DICKERSON

835-8330
AREA CODE 415
IRS #942384224

July 7, 1981

Charles Bond, Esq.
240 Stockton Street, Suite 500
San Francisco, California 94108

Re: John C. Weaver, Jr., M.D. and BMA of Oakland, Inc., Brenda Marie Payton, Supreme Court No. 80-2094

Dear Mr. Bond:

On behalf of our client, Providence Hospital, we agree that amicus curiae briefs may be filed by Union of American Physicians and Dentists in the United States Supreme Court in connection with your petition for writ of certiorari.

Yours truly,

BERRY & BERRY

Phillip S. Berry

cc: All parties

PSB/jrm-253